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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 4913/2024 & CM APPL. 20139/2024**

**SHARDA GUPTA & ORS.**

..... Petitioners

Through: Mr. Rohit Kumar Modi, Advocate  
(Through VC)

versus

**REGISTRAR OF CO-OPERATIVE SOCIETIES & ORS.**

..... Respondents

Through: Mr. Karan Bhardwaj, ASC for  
GNCTD with Mr. Shubham Singh  
and Mr. Rajat Gaba, Advocates for R-  
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Mr. Rakesh Munjal, Sr. Advocate  
with Mr. Rajiv, Advocate for R-2 &  
R-3

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Date of Decision: 04<sup>th</sup> April, 2024.

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**JUDGMENT**

**MANMOHAN, ACJ: (ORAL)**

**CM APPL. 20138/2024 (for exemption)**

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

**W.P.(C) 4913/2024 & CM APPL. 20139/2024**



1. The present writ petition has been filed challenging the impugned order dated 17<sup>th</sup> August, 2021, passed by the Additional Registrar Cooperative Societies ('RCS') dismissing the application filed by the Petitioners seeking an enquiry under Section 61 of the Delhi Cooperative Societies Act, 2003 ('DCS Act') and the order dated 14<sup>th</sup> December, 2023, passed in revision petition filed under Section 116 of the DCS Act, whereby the Financial Commissioner upheld the decision of the RCS.

1.1. In addition, the Petitioners are seeking permission to participate in the forthcoming elections of the Respondent No. 2, Society.

2. Learned counsel for the Petitioners states that though the share certificates of erstwhile members have been endorsed in favour of the present Petitioners, the Respondent No. 2-Society has illegally refused to recognise them as members and has denied them the rights attached with membership, which includes participating in the elections. He states that the Petitioners are bona fide purchasers of the flats, which have been converted into free hold after taking the requisite NOC from Delhi Cooperative Housing Finance Corporation Ltd. ('DCHFC'). He states that the Petitioners have purchased flats, which have been converted from leasehold to freehold; after registration of the conveyance deed. He states that due process was followed by the erstwhile President of the Society while recording the transfer of membership in their favour.

3. In reply, learned Senior Counsel for Respondent Nos. 2 and 3 states that the Petitioners herein have not been granted membership in accordance with the provisions of DCS Act and the Rules framed thereunder. He states that the unilateral act of the erstwhile President in granting membership is not binding as it is contrary to law. He states that since the Petitioners are



not members, they cannot be permitted to participate in the elections. He states that the Financial Commissioner has rightly held that the issue of membership of the Petitioners has to be agitated before appropriate forum in accordance with law. He states that the allegations of financial irregularities are sub-judice in the civil suit and therefore, both, the RCS and Financial Commissioner have rightly declined initiation of the enquiry under Section 61 of the DCS Act.

4. We have heard the learned counsel for the parties and perused the record.

5. The Petitioners have approached the RCS for seeking an enquiry under Section 61 of the DCS Act on three separate issues. First, the Petitioners alleged that Respondent No. 3 had permitted illegal allotment of a flat to his relative, causing financial loss to the Society. The Financial Commissioner has observed that the said issue is directly pending adjudication in a civil suit and therefore, cannot be enquired into separately. The Petitioners have not disputed the said finding of the Financial Commissioner during arguments.

6. Second, the Petitioners have raised an issue with respect to non-grant of membership to the Petitioners and similarly placed persons who have purchased flats in the Society from erstwhile members. The RCS in its impugned order observed that this issue has to be agitated by the Petitioners before the appropriate forum, in accordance with the provisions of the DCS Act; however, this cannot be the reason for directing an inspection under Section 61 of the DCS Act. In this regard, both RCS and Financial Commissioner observed that transfer of membership and new membership has to be in conformity with the loan agreement executed with DCHFC and



the provisions of DCS Act. The Petitioners have not disputed before us that they have an appropriate remedy available to them under the DCS Act for adjudication of the said claim of membership.

7. Third, the Petitioners at the time of hearing of the representation dated 12<sup>th</sup> October, 2020, before the RCS had alleged that no elections and general body meeting has been held by the Society for some time. The Society contended that elections were duly held on 25<sup>th</sup> July, 2021. The Petitioners disputed that the elections were ever held and filed a petition under Section 70 of the DCS Act, 2003 to challenge the said election. The said petition has been dismissed on the ground that it is barred by limitation. In view of the said dismissal, the Financial Commissioner held that the said issue does not survive for consideration. The Petitioners have not disputed the said finding before this Court.

8. In the aforementioned facts, the Petitioners have failed to point out any infirmity in the impugned orders passed by the RCS and Financial Commissioner dismissing the complaint filed by the Petitioners seeking an inspection under Section 61 of the DCS Act, 2003. We accordingly, find no merit in the prayer (a) of this petition.

9. With respect to the prayer (b) for participating in the elections, in view of the admitted fact that the Petitioners are not recognized as members and there is serious dispute as regards their membership, no direction as prayed for can be granted. However, the Petitioners will be at liberty to have their claim of membership adjudicated before the appropriate forum under the DCS Act as observed by the RCS in the impugned order dated 17<sup>th</sup> August, 2021.



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10. Accordingly, the present petition is without any merit and is dismissed along with pending application.

**ACTING CHIEF JUSTICE**

**MANMEET PRITAM SINGH ARORA, J**

**APRIL 4, 2024/rhc/aa**